Supreme Court, U.S.
FILED

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Docket No. _____

THE SUPREME COURT OF THE UNITED STATES

JOHN W. BROOKS

Petitioner

versus

LUBBOCK COUNTY HOSPITAL d/b/a UNIVERSITY MEDICAL CENTER

Respondent

On Petition for Writ of Certiorari for the Texas Supreme Court

PETITION FOR WRIT OF CERTIORARI

JOHN W. BROOKS
Filing this Writ Pro Se

1708 East 25th Street,
Lubbock, Texas 79404
Telephone: (806) 761-0844

BARBARA BAUERNFEIND
Counsel on Whom Service is to be Made

QUESTIONS PRESENTED FOR REVIEW

A. Whether, under the relation-back doctrine as applied in employment discrimination claims, Petitioner timely filed a charge of discrimination against Respondent with the Equal Employment Opportunity Commission where he first sent a communication to the Equal Employment Opportunity Commission on October 10, 2000 notifying it of complaints of discrimination against Respondent but did not complete and file a formal charge of discrimination with the Equal Employment Opportunity Commission until July 18, 2001?

PARTIES TO THE PROCEEDING

PETITIONER

JOHN W. BROOKS

RESPONDENT

LUBBOCK COUNTY HOSPITAL d/b/a UNIVERSITY MEDICAL CENTER

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STATEMENT OF COURT'S JURISDICTION

This Court has jurisdiction in the instant case. The Order of Dismissal which is sought to be reviewed in this case was entered by the 237th District Court in Lubbock County, Texas November 21, 2003. The decision of the intermediate court of appeals was entered on May 24, 2005. (See Appendix B and C). Petitioner's motion for rehearing by the Texas Supreme Court was denied on October 14, 2005. Petitioner believes that this Court is conferred jurisdiction to review by 28 U.S.C.A. §1257. The federal regulation which is called into question in this case is 29 C.F.R. §1601.12. Notification of this petition for writ of certiorari has been attached hereto and has been sent to the appropriate attorneys for the Respondent.

REGULATIONS INVOLVED IN THIS CASE

The regulation at issue in this case is 29 C.F.R. §1601.12 which states:

> (a) Each charge should contain the following:
>
> (1) The full name, address, and telephone number of the person making the charge except as provided in §1601.7;
>
> (2) The full name and address of the person against whom the charge is made, if known (hereinafter referred to as the respondent);
>
> (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices: See § 1601.15(b);

(4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent labor organization, as the case may be; and

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred. 29 C.F.R. §1601.12

STATEMENT OF FACTS

Petitioner is an African American employee of Respondent who

complains of discriminatory conduct that occurred from July 2000 to January 2001. (See Appendix G). During this time, Petitioner was demoted to a position that he felt was below his capabilities and was denied the opportunity to be interviewed for positions that he believes he was qualified to hold. (Id). Due to this discriminatory behavior, Petitioner sent a communication to the Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC") on October 10, 2000 with regard to his complaint against Respondent. (See Appendix E). This communication had attached to it several memos and electronic mail messages that Petitioner had received at work and that he believed supported his claim of discrimination. (Id). On July 18, 2001, outside the formal time period for filing a discrimination complaint, Petitioner filled out and filed a formal charge of discrimination with the EEOC and the Texas Commission on Human Rights (hereinafter referred to as "TCHR").

Respondent filed a plea to the jurisdiction in the trial court claiming that Petitioner failed to exhaust the administrative remedies available to him under state law. The basis for the plea is Respondent's contention that Petitioner did not timely file a complaint with the EEOC/TCHR. Petitioner argued that under the relation back doctrine, which is also codified in Texas law and in 29 C.F.R. §1601.12, the October 10, 2000 communication sent by him to the EEOC constituted a timely filed complaint of discrimination. The trial court found that it lacked jurisdiction, and dismissed the case. Petitioner then filed a motion for new trail which was overruled by operation of law. Petitioner appealed the judgment of the trial court to the Court of Appeals for the Seventh District of Texas at Amarillo, asserting that the trial court erred in dismissing the case for lack of subject matter jurisdiction. The court of appeals affirmed the judgment of the trial court. (Appendix C). Petitioner then asked the Supreme Court of Texas to review the decisions made in the case, but the Supreme Court of Texas refused to do so. (Appendix D).

The federal question regarding whether Petitioner's October 10, 2000 communication to the EEOC is sufficient under the relation back doctrine

to cause the formal EEOC charge to relate back to the date of the communication was raised at the very outset of this case in the trial court. Both the trial court and the court of appeals for the Seventh District of Texas at Amarillo failed to apply the relation back doctrine to the instant case. The October 10, 2000 letter to the EEOC, which the formal EEOC complaint should relate back to, was first identified in the Petitioner's Original Petition at the trial court level. The relation back doctrine was also raised in Petitioner's Brief to the court of appeals and in his petition for review to the Supreme Court of Texas.

ARGUMENT

This Court should grant the petition for writ of certiorari in this case because the decisions in the lower courts failed to apply the relation back doctrine to Petitioner's case, thus putting the integrity of the relation back doctrine in question. Whether the relation back doctrine, as adopted by numerous courts, including this Court and as codified in the Code of Federal Regulations and various Texas statutes, should be applied to a case such as this, is a question that should be addressed by this Court. Further, the federal courts of appeals are in conflict regarding whether uncomplete and informal letters and intakes sent to the EEOC constitute documents to which the relation back doctrine would apply. Additionally, the decision of the lower courts in this case conflict with the United States Supreme Court case *Edelman v. Lynchburg College*, 535 U.S. 106, 122 S.Ct. 1145, 152 L.Ed.2d 188 (U.S. 2002).

A. Whether, under the relation-back doctrine as applied in employment discrimination claims, Petitioner timely filed a charge of discrimination against Respondent with the Equal Employment Opportunity Commission where he first sent a communication to the Equal Employment Opportunity Commission on October 10, 2000 notifying it of complaints of

discrimination against Respondent but did not complete and file a formal charge of discrimination with the Equal Employment Opportunity Commission until July 18, 2001?

Due to the fact that Petitioner sent a communication to the EEOC on October 10, 2000 notifying it of complaints he had about Respondent, under the relation back doctrine as applied by numerous courts and as codified in 29 C.F.R. §1601.12, Petitioner did timely file his charge of discrimination with the EEOC which then made his state law discrimination claims timely.[1] This court should grant certiorari to discuss the issue of whether the communication that Petitioner sent to the EEOC on October 10, 2000 should be deemed sufficient for the trial court to have jurisdiction. Texas appellate courts have, in the past, correctly used the relation back doctrine and applied it to cases such as the one at bar, where the claimant initially made contact with the EEOC prior to the deadline for filing a discrmination complaint but failed to file a fully conforming complaint until after the deadline. See *Stanley Stores v. Chavana*, 909 S.W.2d 554 (Tex. App. - Corpus Christi 1995, writ denied). Under the doctrine, the formal complaint, although filed with the EEOC after the deadline, serves to amend the original contact and correct any defects therein so that the case can be heard by the EEOC. See *Id*; 29 C.F.R. §1601.12; Tex. Lab. Code §21.201; 40 T.A.C. §19.71. This approach, which was not followed by the lower courts in this case, is consistent with federal rules and caselaw involving EEOC complaints.

The relation back doctrine has been applied under federal law. EEOC regulations clearly state that a charge with the EEOC must consist of a "written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of." 29 C.F.R. §1601.12(b). A defective charge may be amended to cure technical defects

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[1]Under Texas law, a charge of discrimination timely filed with the EEOC constitutes a jointly filed charge of discrimination under state law. Texas Labor Code §§21.201(a) and 21.202 (a).

or omissions, including a failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments will relate back to the date the charge was first received. 29 C.F.R. §1601.12 (b).

In *Edelman v. Lynchburg College*, 535 U.S. 106, 122 S.Ct. 1145, 152 L.Ed.2d 188 (U.S. 2002), this Court held that the relation back doctrine did apply when the petitioner sent the EEOC an unverified complaint and then later amended that complaint with a verified version after the applicable statute of limitations had run. This court noted that the relation back doctrine as codified in the U.S.C.A. and the C.F.R. would apply. *Id.* The court also noted that nowhere in the U.S.C.A was the term "charge" defined. *Id.* at 112. The court also noted that "the point of the time limitation is to encourage a potential charging party to raise a discrimination claim before it gets stale, for the sake of a reliable result and a speedy end to any illegal practice that proves out. *Id.* at 112-113.

In the instant case, when Petitioner sent his communication and the attachments thereto to the EEOC on October 10, 2000, the EEOC was made aware that Petitioner believed that unlawful discrimination was being practiced against him by Respondent. The lower courts in this case have ignored this court's ruling in Edelman by not applying the relation back doctrine to this claim filed by Petitioner with the EEOC. Therefore, in keeping with it's previous holdings, this court should find that the formal charge filed by Petitioner should relate back to the communication that Petitioner sent to the EEOC on October 10, 2000.

Additionally, the October 10, 2000 communication should be sufficient to cause his formal charge to relate back to the communication because employment discrimination charges should be construed with the "utmost liberality." *Price v. Southwestern Bell Telephone Company* 687 F.2d 74 (5th Cir. 1982). In *Price* the Fifth Circuit Court of Appeals held that "courts must remain flexible when reviewing failures of persons unfamiliar with administrative complexities to comply with procedural rules. We should not regard such rules as rigid jurisdictional prerequisites." *Id.* at 78. Further, the court in *Price* held that "we construe employment

discrimination charges with the 'utmost liberality,' bearing in mind that such charges are generally prepared by laymen untutored in the rules of pleading. *Price*, 687 F.2d 74 at 78.

In the case at bar, the lower courts wholly ignored the relation back doctrine for EEOC claims as applied by the courts and as set forth by the Code of Federal Regulations and Texas statutes, holding only that the communication sent by the Petitioner on October 10, 2000 was insufficient to be considered a complaint under the Texas Labor Code. The courts did not construe the statutes with the utmost liberality when they heldthat the relation back doctrine would not be applied to the October 10, 2000. The ruling by the courts prevents employees, unfamiliar with the formal rules from asserting discrimination claims, from obtaining relief from discrimination because of inadvertent and/or technical errors which in no way affect the substance of the claim.

The relation back doctrine is valid and should have applied it to Petitioner's situation. In *Peterson v. City of Wichita, Kansas*, 888 F.2d 1307 (10th Cir. 1989), the court noted that "every circuit which has considered the issue has decided in favor of the validity of the regulation, concluding that an unverified charge is a timely filing if it is subsequently amended by a charge executed by oath or affirmation. The court in this case further noted that the U.S. Supreme Court ruled in *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 102 S.Ct. 1127, 71 L.Ed.2d 234 (U.S. 1982) that "filing a timely EEOC charge is indisputably not a jurisdictional prerequisite to suit under *Zipes* and, therefore, held that the relation back doctrine is valid and enforceable.

The decision of the courts of appeals and the failure to apply the relation back doctrine to Petitioner's is directly at odds with the Fifth Circuit Court of Appeals in *Price*, of the Seventh Circuit Court of Appeals in *Peterson*, and with the holding and rationale of the Corpus Christi, Texas Court of Appeals in *Stanley Stores v. Chavana*, 909 S.W.2d 554 (Tex. App. - Corpus Christi 1995, writ denied) and with the holding and rationale of the United States Supreme Court in *Edelman*. The courts in the instant case

also failed to apply a proper construction of the Code of Federal Regulations, all of which codify the relation back doctrine. Therefore, this court should grant certiorari in the instant case to determine whether the relation back doctrine applies to facts such as those in the Petitioner's case.

Under the relation back doctrine, the trial court had jurisdiction over Petitioner's discrimination claims where Petitioner, within the prescribed period for making a complaint of discrimination, sent a communication complaining about violations of his rights to the EEOC, and where Petitioner then, after the prescribed time period, properly completed a formal charge of discrimination which served to cure any defects and admissions in the original communication. Although the law regarding how to file an EEOC complaint is clearly set out in 29 C.F.R. §1601.1 et seq., courts of appeals are in conflict with regard to what constitutes a claim of discrimination that is sufficient under the relation back doctrine. Some of the federal courts of appeals have liberally construed the relation back doctrine. See for example *Price v. Southwestern Bell Telephone Company*, 687 F.2d 74 (5th Cir. 1982); *Tinsley v. First Union National Bank*, 155 F.3d 435 (4th Cir. 1998); *Casavantes v. California State University, Sacramento*, 732 F.2d 1441 (9th Cir. 1984); *Peterson v. City of Wichita, Kansas*, 888 F.2d 1307 (10th Cir. 1989). However, other courts of appeals have held that the relation back doctrine does not apply to even the most detailed complaints, such as EEOC intake questionnaires, for reasons as simple as the original complaint was not sworn. See for example *Park v. Howard University*, 71 F.3d 904 (D.C. Cir. 1996); *Michelson v. Exxon Research and Engineering Company*, 808 F.2d 1005 (3rd Cir. 1987); *Bihler v. Singer Company*, 710 F.2d 96 (3rd Cir. 1983); *Lawrence v. Cooper Communities, Inc.*, 132 F.3d 447 (8th Cir. 1998); *Pijnenburg v. West Georgia Health System, Inc.*, 255 F.3d 1304 (11th Cir. 2001). These conflicts put into question what sort of notice is actually sufficient to trigger the relation back doctrine when the official charge is filed after the deadline. Therefore, this court should grant certiorari to put to rest this issue that is important to both federal and state law.

In the instant case, Petitioner began the process of filing a charge of discrimination against Respondent as early as October 10, 2000, by contacting the EEOC about his complaints of discrimination and Petitioner culminated this process by filing a charge of discrimination against the Respondent with both the EEOC and the TCHR. (See Appendix G). The communication that was originally sent by Petitioner to the EEOC contains the Petitioner's name, address and telephone number, is dated October 10, 2000, references a professional opinion, is addressed to a Ms. Gwen Brannon and states in substance as follows:

> I know you are a very busy person, but I have some concerns that my rights have been violated at University Medical Center. I am enclosing some material for you to review if you would and maybe I could visit with you about my concerns. Attached you will find Memos and documents, that I feel is unjust. I would like your professional opinion on what my options are before I make any decision on this matter. I still have to support my family. (See Appendix E).

Thereafter, on July 18, 2001, Plaintiff executed a sworn charge of discrimination with the EEOC and TCHR. The formal complaint of discrimination sets forth the particulars of the discriminatory conduct by Respondent. (See Appendix G). The formal complaint states that discrimination occurred in July 2000, September 2000 and January 2001. *Id.* There is no question that the formal complaint was filed with the EEOC after the prescribed period for raising the complaint. There is, likewise, no question that the October 10, 2000 communication was sent within the prescribed period. The question, then, is whether the relation back, as codified in the Texas and Federal codes, will allow the October 10, 2000 communication to serve as the charging document with the formal

complaint amending and curing the defects in the communication.

The communication Petitioner sent to the EEOC on October 10, 2000 is sufficient under the relation back doctrine to allow the trial court to have jurisdiction of this case. In the communication, Petitioner complained about possible violations of his rights by his employer, identified his employer, and attached examples of what he thought were relevant documents. Although the communication Petitioner sent to the EEOC in October 2000 was missing information required in a formal complaint, this information was later added by the formal complaint executed by Petitioner, which then, under the relation back doctrine, amended the original communication, and allowed it to serve as the charging document for the purpose of determining the date of filing.

CONCLUSION

This Court should grant Petitioner's writ of certiorari because the Supreme Court of Texas failed to apply the relation back doctrine to Petitioner's case, thus putting the integrity of the relation back doctrine in question. Due to the fact that Petitioner sent a letter to the EEOC on October 10, 2000 notifying it of complaints he had about the Respondent, under the relation back doctrine as set forth by the courts and as codified in 29 C.F.R. §1601.12, Petitioner did timely file his charge of discrimination. Further, this court should grant certiorari because courts of appeals are in conflict with regard to what constitutes a claim of discrimination that is sufficient under the relation back doctrine.

Respectfully Submitted,

JOHN W. BROOKS
Filing this Writ Pro Se
1708 East 25th Street

Lubbock, Texas 79404
Telephone: (806) 761-0844

By: _____
John W. Brooks

BARBARA BAUERNFEIND
Counsel on Whom Service is to be Made

CRAIG, TERRILL, HALE & GRANTHAM, L.L.P.
1500 Broadway, Suite 400
P.O. Box 1979
Lubbock, Texas 79408-1979
Telephone: (806) 744-3232

APPENDIX

A) Order of Dismissal by the 237th District Court of Lubbock County, Texas

B) Judgment of the Court of Appeals for the Seventh District at Amarillo, Texas

C) Opinion of the Court of Appeals for the Seventh District at Amarillo, Texas

D) Order on Petition for Review (August 26, 2005 Order)
Order on Rehearing of the Supreme Court of Texas
(October 14, 2005 Order)

E) October 10, 2000 Letter of John W. Brooks to the EEOC

F) Relevant Statutes not set forth in Petition

28 U.S.C.A. §1257

G) Plaintiff's Original Petition with Charge of Discrimination to the EEOC

APPENDIX "A"

CAUSE NO. 2002-518,848

JOHN W. BROOKS	§	IN THE 237TH DISTRICT COURT
	§	
V.	§	OF
	§	
LUBBOCK COUNTY	§	
HOSPITAL d/b/a	§	
UMC	§	LUBBOCK COUNTY, TEXAS

ORDER OF DISMISSAL

On the 21st day of November, 2003 came on for hearing the Plea to the Jurisdiction filed by LUBBOCK COUNTY HOSPITAL DISTRICT d/b/a UNIVERSITY MEDICAL CENTER, Defendant. The parties appeared by counsel of record and announced ready. After reviewing the pleadings and hearing the arguments of counsel, the Court is of the opinion that the Plea to the Jurisdiction should be granted.

IT IS THEREFORE, ORDERED that the Defendant's Plea to the Jurisdiction is granted and IT IS FURTHER ORDERED that this cause be and it is dismissed for want to jurisdiction. It is further ordered that the cause be removed from the docket of the Court and that all costs incurred be taxed against the Plaintiff.

SIGNED this 21 day of November, 2003.

S/Sam Medina
JUDGE PRESIDING

APPENDIX "B"

John W. Brooks,
Appellant

v. No. 07-04-00068-CV

Lubbock County Hospital d/b/a University Medical Center,
Appellee

☐ From the 237th District Court of Lubbock County

☐ May 24, 2005

☐ Opinion Per Curiam

JUDGMENT

Pursuant to the opinion of the Court dated May 24, 2005, it is ordered, adjudged and decreed that the judgment of the trial court be affirmed.

It is further ordered that appellant John W. Brooks pay all costs in this behalf expended for which let execution issue.

It is further ordered that this decision be certified below for observance.

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APPENDIX "C"

NO. 07-04-0068- CV

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL A

MAY 24, 2005

JOHN W. BROOKS

V.

LUBBOCK COUNTY HOSPITAL D/B/A UNIVERSITY MEDICAL CENTER, APPELLEE

FROM THE 237TH DISTRICT COURT OF LUBBOCK COUNTY;

NO. 2002-518, 848; HONORABLE SAM MEDINA, JUDGE

Before REAVIS and CAMPBELL, JJ.[1]

[1]Former Chief Justice Phil Johnson was on the panel that heard oral argument. He did not participate in the decision. Tex. R. App. P. 41.1 (b)

MEMORANDUM OPINION

By this appeal, appellant John W. Brooks contends the trial court erred in dismissing his action alleging racial discrimination against Lubbock County Hospital, d/b/a University Medical Center, for lack of jurisdiction. We affirm.

Brooks, an African-American citizen of the United States, has been employed by the hospital since February 1987. In 1996, Brooks became the manager of the Emergency Center Business Office and held his position until September 2000 when he was demoted to supervisor of commercial follow-up Patient Account Department. Brooks alleged that before his demotion, he had applied for promotion to Director of Admitting and also inquired about a promotion as Assistant Director of Admitting. By his pleadings, Brooks alleged that the fact he did not have a college degree was given as the ostensible reason he was not considered for the promotions. Brooks also alleged

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- he was the victim of write-ups by Ms. Bullett beginning in July 2000;

- he was not given a bonus in January 2001 because of the discriminatory write-ups;

- although he applied for a promotion to resource Assistance Department in June 28, 2001, he was not selected for an interview;

- the ratio of African-Americans to whites working in the Patient Accounting Department is disproportionate from the number of African-American individuals qualified to perform some of the jobs in the department; and

- the hospital engages in discriminatory practices by failing to select qualified African-Americans for jobs in such department and has engaged in a pattern or practice of discrimination in failing to fill positions in the Patient Accounting Department with qualified African-American individuals.

He concludes the hospital unlawfully discriminated against him contrary to section 21.051 of the Texas Labor Code. By its plea to the jurisdiction, the hospital alleged Brooks failed to exhaust administrative remedies; thus, the trial court did not have subject matter jurisdiction to hear the case. *See* §21.201. Brooks did not file an answer or response to the hospital's plea to jurisdiction. Following a hearing on the motion to dismiss, the trial court signed an order on November 21, 2003, dismissing the action for want of

jurisdiction. Brooks's motion for new trial by which he alleged compliance with the requirements of section 21.201 was sufficient under the relation back doctrine was overruled by operation of law.

By his only issue, Brooks contends the trial court erred in dismissing his case for lack of subject matter jurisdiction based upon a failure to exhaust administrative remedies or to timely file a charge of discrimination where he timely (within the 180 day limitations period) sent a letter voicing his concerns of racial discrimination to the Equal Employment Opportunity Commission such that, under the relation back doctrine, the untimely 9outside the 180 day limitations period) filing of his formal complaint with the Equal Employment opportunity Commission/Texas Commission on Human Rights (EEOC/TCHR) will date back to the date of the letter. We disagree.

Subject matter jurisdiction of a suit alleging discrimination by an employee under sections 21.201(a) and 21.202(a) of the Texas Labor Code requires the timely submission of a grievance to the Commission on Human Rights within 180 days of the alleged misconduct. Vincent v. West Texas

State University, 895 S.W. 2d 469, 473 (Tex. App.–Amarillo 1995, no writ), (Citing Schroeder v. Texas Iron Works, Inc., 813 S.W. 2d 483, 486 (Tex. 1991)). Under section 21.201(b), an administrative review is commenced by a person filing a written complaint, made under oath, with the commission. The complaint must state:

(1) that an unlawful employment practice has been committed;

(2) the facts on which the complaint is based, including the date, place and circumstances of the alleged unlawful employment practice; and

(3) facts sufficient to enable the commission to identify the respondent.

§ 21.201 (c). "Respondent" means the person charged in a complaint filed under this chapter and may include an employer, employment agency, labor organization, or join labor-management committee that controls an apprenticeship or other training or retraining program, including an on-th-job program. See §21.002(13), Subsections (e) and (f) authorize the amendment of a complaint to cure technical defects or omissions and the allegation of additional facts.

On October 10, 2000, brooks wrote the EEOC as follows:

> I know you are a very busy person, but I have some concerns that my rights have been violated at University Medical Center. I am inclosing some material for you to review if you would and maybe I could visit with you about my concerns. Attached you will find Memos and documents, that I feel is [sic] unjust. I would like your professional opinion on what my options are before I make any decision on this matter. I sill have to support my family.

Brooks acknowledges that a discrimination complainant must be filed with the EEOC/TCHR within in 180 days; however, by his argument, he contends his October 10 letter should be deemed sufficient to confer jurisdiction on the trial court.

Even if the letter is sufficient to constitute a charge of unlawful employment practice, a question we need not decide, it does not provide the underlying facts of the complaint nor the date thereof and does not name the respondent nor provide sufficient facts to identify the respondent [2]. While the five alleged acts of unlawful employment practice set out in the pleadings may be sufficient to survive a special exception or similar

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[2] The memos and documents referred to in the letter do not appear in the record before us.

challenge to the pleadings, we conclude the October 10 letter was not sufficient to conger subject matter jurisdiction on the trial court. Brooks's sole issue is overruled.

We need not address the relation back doctrine presented by Brooks in his motion for new trial because of his reliance on the October 10 letter. Additionally, he does not present an issue asserting trial court error in denying the motion for new trial. Moreover, because the relation back doctrine was not raised by Brooks at the first hearing, it could not be considered as grounds for a new trial. *See* Mushinski v. Mushinski, 621 S.W. 2d 669, 670-71 (Tex. Civ. App.–Amarillo 1964, writ ref'd n.r.e.)

Accordingly, the judgment of the trial court is affirmed.

Per Curiam

APPENDIX "D"

Re: Case No. 05-0531 Date: 8/26/2005
COA #: 07-04-00068-CV TC #: 2002-518, 848
Style: John W. Brooks v. Lubbock County Hospital D/B/A University Medical Center

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. (Justice Johnson and Justice Willett not sitting)

Mail to:

Mr. J. Craig Johnston
JOHNSTON & MILLER
2402 52nd Street, Suite 12
Lubbock, Texas 79412

Re: Case No. 05-0531 Date: 10/14/2005
COA #: 07-04-00068-CV
Style: John W. Brooks v. Lubbock County Hospital D/B/A University Medical Center

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review. (Justice Johnson not sitting)

Mail to:

Mr. J. Craig Johnston
JOHNSTON & MILLER
2402 52ND Street, Suite 12
Lubbock, Texas 79412

APPENDIX "E"

John W. Brooks
1708 East 25th Street
Lubbock, TX 79404
806-747-7744

October 10, 2000

Reference: Professional opinion

Dear Ms. Gwen Brannon:
I know you are a very busy person, but I have some concerns that my rights have been violated at University Medical Center. I am inclosing some material for you to review if you would and maybe I could visit with you about my concerns. Attached you will find Memos and documents, that I feel is unjust. I would like your professional opinion on what my options are before I make any decision on this matter. I still have to support my family.

Sincerely,

S/John Brooks

Enclosure (Documentation of meeting that took place)

JWB

APPENDIX "F"

§ 1257. State Courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statues of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section the term "highest court of a State" includes the District of Columbia Court of Appeals.

(June 25, 1948, c. 646, 62 Stat. 929; July 29, 1970, Pub. L. 91-358, Title I, § 172(a)(1), 84 Stat. 590; June 27, 1988, Pub. L. 100-352, § 3, 102 Stat. 662.)

APPENDIX "G"

CAUSE NO. _____

JOHN W. BROOKS, Plaintiff,	§	IN THE ____ DISTRICT COURT
	§	
v.	§	OF
	§	
LUBBOCK COUNTY HOSPITAL DISTRICT, d/b/a UNIVERSITY MEDICAL CENTER, Defendant	§ § § § §	LUBBOCK COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES JOHN W. BROOKS, Plaintiff, complaining of LUBBOCK COUNTY HOSPITAL DISTRICT, d/b/a UNIVERSITY MEDICAL CENTER, Defendant, and for cause of action would show unto the Court as follows:

I. Parties

(1) Plaintiff is a resident of Lubbock, Lubbock County, Texas.

(2) Defendant is a duly constituted governmental body organized and existing pursuant to the laws of the State of Texas and may be served with process by service upon James P. Courtney, President and Chief Executive

Officer at his offices located at 602 Indiana Avenue, Lubbock, Lubbock County, Texas, 79415.

II. Discovery Level

(3) Plaintiff alleges that discovery should be conducted under Level II, *Rule 190.2, Tex. Rules of Civ. Pro.*

III. Facts

(4) Plaintiff is an African-American citizen of the United States. Plaintiff is a current employee of the Defendant in the Patient Accounting Department located in the facilities of the Defendant at 602 Indiana Avenue, Lubbock, Texas.

(5) Plaintiff began his employment with the Defendant on February 23, 1987 as a collection clerk in the Patient Accounting Department. Plaintiff's current job is supervisor of commercial follow-up in the Patient Accounting Department.

(6) Plaintiff became the manager of the Emergency Center Business Office in the same department in about 1996. Plaintiff held this position until September 26, 2000, when he was demoted to the position that he now

has.

(7) Prior to the demotion mentioned above, Plaintiff had applied for promotion to the Director of Admitting in July 2000, and inquired about being promoted to the position as the Assistant Director of Admitting. Both of such positions were denied Plaintiff which would have been substantial promotions for him. The ostensible reason for not being considered nor promoted to either the position of Director of Admissions or the Assistant Director of Admissions was that the qualifications for the position included a college degree.

(8) Plaintiff had little complaint about the college degree requirement of the Director of Admitting; however, the Assistant Director of Admitting was a new position that had just been created and there was no posting nor listing of qualifications necessary for the job. Plaintiff had been told that he would be qualified for that position in the sense that he did not have to have a college degree. But, Plaintiff was not considered for the job because the selecting official later determined that the person had to fill the position of Assistant Director of Admitting should be degreed. Otherwise Plaintiff

was fully qualified to fill the position of Assistant Director. He had spoken with the selecting official prior to the time that the position had been filled out, but Plaintiff was never given the opportunity to formally apply for the job. Both of such positions (Director and Assistant Director) were filled by individuals who were white.

(9) Then, as mentioned above, on September 26, 2000, Plaintiff's job was eliminated and he was transferred to the Patient Accounting Office as a supervisor. The announcement of the filling of the Assistant Director's position was made on September 29, 2000.

(10) Since that time, Evelyn Gullett who had been appointed as the Director of Admitting has been terminated from her position as Director of Admitting and the individual who had been in the position as Assistant Director of Admitting - Landa Cognasi, was named the Director. The Defendant then elevated Christie Morrison, (who had been employed by the Defendant in the Patient Accounting Office for a shorter period of time than Plaintiff) as the Assistant Director of Admitting replacing Ms. Cognasi. Ms. Morrison does not have a college degree. Of course,

Plaintiff had made it known that he was interested in the Assistant Director's position from the time that Ms. Cognasi was initially named to the position - and, again, Plaintiff was not given an opportunity to apply for nor be considered, for the Assistant Director's position.

IV. Causes of Action

(11) Further, Plaintiff was the victim of write-ups by Ms. Gullett beginning in July, 2001. Ms. Gullett gave Plaintiff "counseling memos," on more than one occasion. The so-called deficiencies that Ms. Gullett cited Plaintiff for over the course of the next several months were refuted by Plaintiff, and Plaintiff herewith alleges that the write-ups were a form of racial discrimination as he was singled out on matters that other white employees were not disciplined for.

(12) Plaintiff also failed to receive a bonus because of the unfair and discriminatory write-ups that were given him by Ms. Gullett. Plaintiff lost approximately $500.00 in not being paid such bonus.

(13) During this time span (July 2000 to date), Plaintiff has also applied for other jobs that would have been promotions in the Patient Accounting

Department but has not been promoted nor even considered for these jobs.

(14) Plaintiff would further show that the Defendant now has but two (2) African-Americans in the Patient Accounting Department and over the years has had only one (1) or two (2) African-Americans working in such department, out of a total of some 30-35 employees. The ratio of African-Americans to whites is totally disproportionate from the number of African-American individuals qualified to perform some of the jobs in that department.

(15) Plaintiff alleges that the Defendant is engaging in discriminatory practices by failing to select qualified African-Americans for jobs in such department and that the Defendant has engaged in a pattern or practice of discrimination in failing to fill positions in the Patient Accounting Department with qualified African-American individuals, Defendant has unlawfully discriminated against Plaintiff and other African-Americans pursuant to the provisions of *§21.051, Texas Labor Code.*

V. Prerequisites to Suit Fulfilled

(16) Plaintiff would show that he began the process of filing a charge of

discrimination against Defendant as early as October 10, 2000, by contacting the Equal Employment Opportunity Commission ("EEOC"), outlining his complaints of racial (and sex) discrimination. He finally culminated the process by filing a charge of discrimination against the Defendant with both the EEOC and the Texas Commission on Human Rights ("TCHR") wherein he alleged race and sex discrimination, based on the job selection process outlined above. A true and correct copy of Plaintiff's charge is hereto attached and marked as Exhibit "A", to which reference is hereby made and which is incorporated herein verbatim.

VI. Relief and Damages Sought

(17) Plaintiff therefore sues the Defendant for all damages and relief, including attorneys fees, provided under *Texas Labor Code §21.258, §21.2585, and §21.259.* Plaintiff further sues the Defendant for appropriate equitable relief with regard to the pattern and practice of the Defendant with regard to its hiring policies as herein alleged.

VII. Damages Sought Within Jurisdiction of Court

(18) Plaintiff avers that the amount of damages he is seeking herein are

within the minimum jurisdictional limits of the Court.

Prayer

WHEREFORE, Plaintiff prays that the Defendant be cited to appear and answer herein and that upon final trial hereof, that Plaintiff recover all relief and damages to which he may show himself to be justly entitled; that Plaintiff recover his attorneys fees; that Plaintiff recover pre-judgment and post-judgment interest on all sums awarded; that Plaintiff recover his costs; and that Plaintiff recover such other and further relief to which he may show himself to be justly entitled, both legal and equitable.

Respectfully Submitted,

S/_____

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ATTORNEY FOR PLAINTIFF

EXHIBIT "A"

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; ☐ FEPA
See Privacy Act Statement before completing this form. ☐ EEOC

361A10912

Texas Human Rights Commission and EEOC
State or local Agency, if any

NAME (*Indicate Mr., Ms., Mrs.*)	HOME TELEPHONE (*Include Area Code*)
Mr. John Brooks	(806) 747-7744
STREET ADDRESS CITY, STATE AND ZIP CODE	DATE OF BIRTH
1708 E. 25th St., Lubbock, Texas 79404	05/17/1956

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below*).

NAME	NUMBER EMPLOYEES	PHONE
UNIVERSITY MEDICAL CENTER	CAT C (201-500)	(806) 743-3111
STREET ADDRESS CITY, STATE AND ZIP CODE		COUNTY

CAUSE OF DISCRIMINATION BASED ON (*Check appropriate boxes)*

☐RACE ☐COLOR ☐ SEX ☐RELIGION ☐ NATIONAL ORIGIN

☐ RETALIATION ☐AGE ☐DISABILITY ☐OTHER (*Specify*)

DATE DISCRIMINATION TOOK PLACE

Earliest	*Latest*
07/18/2000	01/15/2001

☐ Continuing Action

PARTICULARS ARE (*If additional space is needed, attach extra sheets*)

I. I was not promoted to the position of Director of Admitting in July, 2000, nor Ass't Director of Admitting shortly thereafter.

I was demoted from the Manager of Emergency Center Business Office effective 9/26/00, to a supervisory position with no loss in pay. I was made a supervisor of Patient Financial Services.

I was disciplined unfairly/discriminatorily by Evelyn Gullet, Anglo-Caucasian, Director of Admitting, on 7/18/00 and 9/8/00. My subsequent appeals were to no avail, and Gullet's write-ups were upheld.

I was denied a bonus during January, 2001, based on the unfair write-ups.

II. When I asked Mark Vincent, Anglo-Caucasian, Vice-President, why I had not been considered and/or promoted to the position of Director

of Admissions, he told me that the person who would be successful needed a college degree.

I was told that my position as Manager of the Emergency Center Business Office was abolished and that I would become Supervisor of Patient Financial Services.

** Text is Continued on Attached Sheet(s) **

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

Notary - (When necessary for State and Local requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing in true and correct.

S/ John Brooks

Date: 7/18/01

S/ John Brooks

Subscribed and sworn to before me this date

Equal Employment Opportunity Commission
Form 5 - Charge of Discrimination, Additional Text

Deficiencies cited by Gullet in her memo of discipline to me were refuted. Yet, the memo was allowed to stand as written.

I received no bonus because of the unfair/discriminatory write-up.

III. I believe I have been discriminated against because of my race, Black, and my sex, male, in violation of Title VII of the Civil Rights Act of 1964, as amended, when I was not promoted, when I was demoted, when I was disciplined, and when I was denied a bonus.